

REMARKS

Status of the Application

Claims 1-4 were pending in the present application.

Claims 1-4 are, now, cancelled.

New claims 5-10, added through the instant amendment, are now before the Examiner.

The Examiner rejects the claims on the following grounds:

1. Claims 1-4 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 2, 5, 8 and 9 of U.S. Patent No. 6,649,764;

Applicants believe the preceding amendments and the following remarks traverse the Examiner's rejection of the claims.

1. The Double Patenting Rejection Is Now Moot

In order to further business interest and without acquiescing to the rejection set out by the Examiner, while reserving the right to prosecute the same (or similar) claims as filed, the Applicants have cancelled claims 1-4 and have introduced a new claim set (e.g. claims 5-10). This new claim set is directed: i) a composition of matter (i.e. 7-fluoro-1-methyl-3- methylthio-4-quinolone) and ii) methods for the synthesis of: 7-fluoro-1-methyl-3-methylthio-4-quinolone, (S)-(-)-7-fluoro-1-methyl- 3-methylsulfinyl-4-quinolone, and (R)-(+)-7-fluoro-1-methyl-3-methylsulfinyl-4-quinolone.

Applicants note the claimed embodiments in U.S. Patent No. 6,649,764 are directed to methods of synthesis, unlike claim 5 pending in the instant application.¹ Moreover, while the pending method claims in the instant application (e.g. claims 6-10) describe the synthesis of the same endproducts as claimed in U.S. Patent No. 6,649,764; selected synthetic reagents are different. That is to say, in the pending application, the Applicants claim the use of some reagents as a genus rather than limiting the same to specific compounds.² The pending claims in the instant application are patentably distinct vis-à-vis the claims set out in U.S. Patent No. 6,649,764. The Applicants, therefore, respectfully request the pending rejection based on statutory type double patenting be withdrawn.

CONCLUSIONS

The Applicants respectfully submit the pending claims are in condition for allowance. Should the Examiner believe a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect.

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¹ Support for 7-fluoro-1-methyl-3- methylthio-4-quinolone is found in Fig. 1 and pp. 14-16 of the application as filed.

² Support for a “camphor based reagent” is found at page 7, line 15 – page 8, line 3 of the application as filed. Support for a “reducing agent” is found in the reaction projected in Fig. 1 wherein floequinan (1) is reduced, using triphenyl phosphine, to form 7-fluoro-1-methyl-3- methylthio-4-quinolone (2).